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13
14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA
16

17 CROSSFIT, INC., a Delaware
18 corporation,

19 Plaintiff,

20 v.

21 NATIONAL STRENGTH AND
22 CONDITIONING ASSOCIATION, a
Colorado corporation,

23 Defendant.
24

Case No. 3:14-cv-01191-JLS-KSC

JOINT STATUS REPORT

Dept: 4D
Judge: Hon. Janis L. Sammartino

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1 Plaintiff CROSSFIT, INC. (“CrossFit”) and Defendant NATIONAL
 2 STRENGTH AND CONDITIONING ASSOCIATION (“NSCA”) hereby submit
 3 the following status report pursuant to the Court’s order (ECF No. 394) granting in
 4 part and denying in part CrossFit’s Renewed Motion for Terminating Sanctions
 5 (“Mot.,” ECF Nos. 326, 359).

6 **I. INTRODUCTION**

7 In its December 4, 2019 Order, the Court ordered the parties to meet and
 8 confer on or before December 31, 2019, “[t]o resolve the amount of damages to
 9 which CrossFit is entitled and the terms for the NSCA’s payment of the ordered
 10 monetary sanctions to CrossFit.” (ECF No. 394 at 49.) The Parties have complied
 11 with this Order.

12 Between December 4 and 19, 2019, counsel for CrossFit and the NSCA
 13 informally exchanged information related to the amount of damages to which
 14 CrossFit is entitled and the terms for the NSCA’s payment of the ordered monetary
 15 sanctions to CrossFit. On December 20, 2019, counsel for CrossFit and the NSCA
 16 met and conferred in person to discuss these two issues. A court reporter was
 17 present at this meeting and at the Court’s request, the Parties will submit the meeting
 18 transcript to confirm their compliance with the Court’s Order.

19 On December 30, 2019, the NSCA sent a letter providing additional
 20 information related to its position on the amount of damages to which CrossFit is
 21 entitled. CrossFit and the NSCA exchanged further correspondence on January 6,
 22 2020, and January 10, 2020, respectively. On January 13, 2020, counsel for the
 23 Parties held a final telephonic conference to meet and confer on these issues.

24 **II. TERMS FOR THE NSCA’S PAYMENT OF THE ORDERED** 25 **MONETARY SANCTIONS TO CROSSFIT**

26 **CrossFit’s Position and Request for Final Award:**

27 The Parties have not and will not reach an agreement regarding an
 28 arrangement for the NSCA’s payment of the \$3,997,868.66 monetary sanctions

1 award issued by the Court (“Sanctions Award”). As such, CrossFit respectfully
 2 requests the Court issue an order directing the NSCA to pay the Sanctions Award in
 3 full by January 31, 2020. An order for immediate payment is appropriate at this
 4 time to ensure the severe financial prejudice already suffered by CrossFit at the
 5 hands of the NSCA is not compounded through further NSCA delay tactics.

6 During the in-person meet and confer, the NSCA represented that it is unable
 7 to pay the Sanctions Award while still meeting its monetary obligations to continue
 8 business operations. Specifically, the NSCA’s counsel explicitly stated: “They [the
 9 NSCA] certainly don’t have \$4 million that they can pay out in sanctions and then
 10 continue to run their business, no.”¹ However, the NSCA produced a balance sheet
 11 reflecting it has cash reserves and unencumbered assets in excess of \$4 million
 12 (sufficient to pay the Sanctions Award in full). Rather than offering to use these
 13 assets to satisfy its debt to CrossFit, the NSCA instead requested that CrossFit agree
 14 to a “payment plan” as follows: the NSCA would pay \$1.5 million by January 31,
 15 2020, with the remaining balance paid only in quarterly installments of \$400,000
 16 each, beginning April 30, 2020. In effect, the NSCA requested that CrossFit finance
 17 the NSCA’s obligation to remedy the financial damage it has inflicted upon
 18 CrossFit.

19 In response, and attempting in good faith to find a workable alternative,
 20 CrossFit inquired whether the NSCA would be willing to provide security for
 21 payment of the Sanctions Award (*i.e.*, a lien on unencumbered assets) during the
 22 course of proposed repayment to provide security to CrossFit for the risk associated
 23 with payment over time. As of the date of this Status Report, over three weeks have
 24 passed and the NSCA has not provided a response.

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26 _____
 27 ¹ While the NSCA suddenly disputes that this statement was made, this exact
 28 statement appears in the hearing transcript on page 10, lines 13-16, in response to
 CrossFit’s question: “Do they not have \$4 million at this point in time to pay?”

1 The NSCA's suggested payment plan is salt on the wound created by years of
2 misconduct, and reflects the NSCA's continued attempts to skirt responsibility for
3 its actions. In effect, the NSCA suggests that CrossFit should involuntarily finance
4 the bulk of the Sanctions Award – \$2.5 million – in the form of an unsecured loan
5 over two years. This, after CrossFit has already involuntarily incurred and paid
6 those same amounts as a result of the NSCA's discovery misconduct.²

7 The NSCA's proposal is an absurd attempt to shift the risk of non-payment
8 and opportunity cost to CrossFit, and evade any harsh impact from the serious relief
9 the Court has already ordered. The NSCA's games demonstrate the need for a Final
10 Order that is subject to immediate payment and execution. If the NSCA is unable to
11 pay this debt as represented,³ CrossFit should not bear the risk of the NSCA's
12 insolvency or its continued depletion of assets. In contrast, if the NSCA has
13 sufficient cash reserves and/or unencumbered assets to satisfy the Sanctions Award,
14 there is no legitimate basis for any "payment plan" over time.

15 **NSCA's Position:**

16 The NSCA disagrees with much of CrossFit's Position Statement. Many of
17 the statements contained therein are incomplete or inaccurate. CrossFit states that
18 "the NSCA represented that it is unable to pay the Sanctions Award while still
19

20 ² It is worth noting that the NSCA is saving \$140,000 a month as a result of the
21 Parties' recent agreement to process unarchived data. Prior to that agreement,
22 CrossFit understands that the NSCA had been making monthly payments to the
23 forensic evaluator in this case, indicating the NSCA has the means and ability to pay
the Sanctions Award—or at the very least, it is fully capable of obtaining financing
other than CrossFit.

24 ³ The NSCA has represented that it will be unable to meet its monthly expenses if it
25 pays the Sanctions Award. CrossFit has requested financial documentation relating
26 to its cash flow representations to support such statements. To date, it is unclear
27 whether the NSCA will produce such documents. Regardless, it is not incumbent on
28 CrossFit or this Court to accommodate the NSCA's desires to continue "business as
usual." CrossFit's sole interest is being made whole for the damages it has suffered
as a result of the NSCA's five years of misconduct.

1 meeting its monetary obligations to continue business operations” and “the NSCA
2 also produced a balance sheet reflecting it has cash reserves and unencumbered
3 assets in excess of \$4 million”. After the in person meet and confer session, the
4 NSCA explained in writing what the balance sheet signifies as well as the NSCA’s
5 ability to pay the sanction award:

6 The balance sheet is a snapshot of assets and liabilities that
7 does not take into account ongoing obligations/expenses
8 such as payroll, accounts payable, payments to third party
9 creditors, and normal business operating expenses. These
10 items amount to approximately \$1M per month. The
11 payment terms proposed by the NSCA take into account
12 the need to meet other financial obligations to run the
13 NSCA’s business.

14 Ruch Jan. 10, 2020, Ltr, at p. 2. Contrary to CrossFit’s Position Statement, the
15 NSCA does not “suddenly” dispute counsel’s statement from the in person meet and
16 confer session. Rather, for accuracy, the complete context on the issue must include
17 the NSCA’s more complete written response.

18 With respect to the security interest issue, security interests impact many
19 aspects of operating a business. On January 10, 2020, the NSCA stated that it was
20 willing to further meet and confer on the security interest and other issues, and
21 continues to be willing to do so.

22 CrossFit states that it has requested financial documentation relating to the
23 NSCA’s cash flow representations. That request was made during a 3:00 pm call on
24 Monday, January 13, 2020, not allowing adequate time for the NSCA to consider or
25 respond to the request.

26 In response to this Court’s December 4, 2019, Order directing the parties to
27 meet and confer on “the terms for the NSCA’s payment of the ordered monetary
28 sanctions to CrossFit,” the NSCA has confirmed that it is able to pay \$1.5M by
29 January 31, 2020, and make quarterly payments of \$400,000, beginning April 30,
30 2020, until the balance due is paid in full. The NSCA has proposed that the

1 applicable interest rate for the amount that is unpaid after January 31, 2020, be the
 2 rate that is set forth in 18 USC § 1961 for post-judgment interest. The payment
 3 terms proposed by the NSCA take into account the NSCA's ongoing
 4 obligations/expenses such as payroll, accounts payable, payments to third party
 5 creditors, and normal business operating expenses.

6 Contrary to CrossFit's concern about delay tactics, the NSCA has met and
 7 conferred in good faith and has made a bona fide and reasonable payment proposal.

8 **III. AMOUNT OF DAMAGES TO WHICH CROSSFIT IS ENTITLED**

9 **Joint Statement:**

10 On December 6, 2019, CrossFit provided the NSCA with a list of categories
 11 of damages to which it is entitled and represented in good faith that it would be able
 12 to prove up well over \$70 million in damages. On December 30, 2019, and as
 13 clarified on January 10, 2020, the NSCA provided to CrossFit the NSCA's legal
 14 analysis as to the categories of damages and the reasons that the NSCA contended
 15 that CrossFit was or was not entitled to recover such damages. The Parties have
 16 exchanged documents and legal analysis related to this issue and have not been able
 17 to reach an agreement. The Parties agree that additional meet and confer would be
 18 futile.

19 Accordingly, the Parties agree and respectfully request that CrossFit be
 20 permitted to proceed with its April 13, 2020 default motion on damages.

21 The NSCA respectfully requests that it be allowed until July 13, 2020, to file
 22 its opposition to CrossFit's Motion for Default Judgment, which is approximately
 23 the same amount of time that CrossFit will have from the date of this Joint Status
 24 Report until it files its Motion on or before April 13, 2020.

25 CrossFit respectfully requests until September 11, 2020, to file its Reply and
 26 for the Court to set a hearing date at its earliest convenience after September 11,
 27 2020.

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1 Dated: January 14, 2020

TROUTMAN SANDERS LLP

2
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10 Attorneys for Plaintiff

11 CROSSFIT, INC.

12 Dated: January 14, 2020

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20 Attorneys for Defendant NATIONAL
21 STRENGTH AND CONDITIONING
22 ASSOCIATION

23 **ATTESTATION**

24 Pursuant to Central District of California Civil Local Rule 5-4.3.4(a)(2)(i), I
25 hereby attest that all other signatories listed above, and on whose behalf the filing is
26 submitted, concur in the filing's content and have authorized the filing.

27 Dated: January 14, 2020

28 /s/ Wynter L. Deagle

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[PROOF OF SERVICE FOR CM/ECF FILING]

I, the undersigned declare:

I am a citizen of the United States and employed in San Diego County, California. I am over the age of 18 and not a party to the within action; my business address is 11682 El Camino Real, Suite 400, San Diego, CA 92130-2092.

I hereby certify that on January 14, 2020, I electronically filed the attached document:

JOINT STATUS REPORT

with the Clerk of the court using the CM/ECF system, which will then send a notification of such filing to the following registered participants identified on the Service List attached.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on January 14, 2020, at San Diego, California.

s/ Wynter Deagle

SERVICE LIST

Case 3:14-cv-01191-JLS-KSC

*Crossfit, Inc. v. National Strength and Conditioning Association***Electronic Mail Notice List**

The following are those who are currently on the list to receive e-mail notices for this case.

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